

[View National Reporter System version](#)

SAN JOAQUIN COUNTY EMPLOYEES ASSOCIATION, INC., Plaintiff and Respondent,

v.

CITY OF STOCKTON et al., Defendant and Appellant.

Civ. No. 23337.

Court of Appeal, Third District, California.

Nov 13, 1984.

SUMMARY

The trial court granted a writ of mandate ordering a city to pay all necessary health insurance premiums during the pendency of labor negotiations. The city and an employee representative executed memoranda of understanding (MOU) covering two bargaining units. The MOU provided that the city was to pay premiums for employee health insurance. Prior to the expiration of the MOU, negotiations began on new MOU. Sometime after they expired, the cost of insurance rose by \$19 per employee per month. While the negotiations were still in progress and prior to any impasse in negotiations, the city notified its employees that it would withhold the \$19 from each employee's paycheck. (Superior Court of San Joaquin County, No. 171791, Michael N. Garrigan, Judge.)

The Court of Appeal affirmed. The court held that the city's actions disturbed the status quo and violated the meet and confer requirement ([Gov. Code, § 3505](#)) of the Meyers-Milias-Brown Act ([Gov. Code, § 3500](#) et seq.). The expired MOU required the city to provide a certain level of insurance benefits, not to make a specific amount of premium contribution. When the city unilaterally began to extract monetary contributions from employees to pay for the benefits it was obligated to supply under the MOU, it disturbed the status quo. Accordingly, under the circumstances, the trial court properly issued a writ of mandate. (Opinion by Sims, J., with Regan, Acting P. J., and Blease, J., concurring.) *814

HEADNOTES

Classified to California Digest of Official Reports

(1) Labor § 37--Collective Bargaining--Public Employees.

The Meyers-Milias-Brown Act (Gov. Code, § 3500 et seq.) codifies California's recognition of the right of certain public employees to bargain collectively with their government employers. [See Cal.Jur.3d, Public Officers and Employees, § 184 et seq.; [Am.Jur.2d, Labor and Labor Relations, § 1764](#) et seq.]

(2) Municipalities § 74--Officers, Agents, and Employees--Compensation.

Gov. Code, § 3505, requires a city to meet and confer in good faith with employee representatives prior to making any unilateral change in the level of wages or benefits.

(3a, 3b) Municipalities § 74--Officers, Agents, and Employees-- Compensation--Health Insurance Premiums.

A city's actions disturbed the status quo and violated the meet and confer requirement (Gov. Code, § 3505) of the Meyers-Milias-Brown Act (Gov. Code, § 3500 et seq.), where, during the pendency of negotiations with the representative of two city-employee bargaining units, and after the memoranda of understanding (MOU) covering the units had expired, but prior to any impasse in the negotiations, the city notified employees it would withhold an additional \$19 from each employee's paycheck to cover the increased cost of health insurance. The expired

MOU required the city to provide a certain level of insurance benefits, not to make a specific amount of premium contribution. When the city unilaterally began to extract monetary contributions from employees to pay for the benefits it was obligated to supply under the expired MOU, it disturbed the status quo.

(4) Labor § 42--Collective Bargaining--Effect of National Labor Relations Act--Public Employees.

Cases interpreting the National Labor Relations Act (29 U.S.C. § 41 et seq.) may properly be referred to for such enlightenment as they may render in interpreting the Meyers-Milias-Brown Act (Gov. Code, § 3500 et seq.), which codifies the right of certain public employees to bargain collectively with their government employers.

(5) Labor § 42--Collective Bargaining--Effect of National Labor Relations Act--Employer's Duty to Bargain Collectively After Expiration of Collective Bargaining Agreement.

Under § 8(a)(5) of the National Labor Relations Act (29 U.S.C. § 158(a)(5)), after the expiration *815 of a collective bargaining agreement, the duty to bargain collectively requires the employer to maintain the status quo without taking unilateral action as to wages, working conditions, or benefits until negotiations reach an impasse. The status quo is measured by reference to the expired agreement itself. Thus, during negotiations prior to impasse an employer may not unilaterally change insurance benefits specified in an expired agreement.

(6) Labor § 43--Collective Bargaining--Effect of National Labor Relations Act--Unfair Labor Practices--Refusal to Bargain Collectively.

Although § 8(a)(5) of the National Labor Relations Act (29 U.S.C. § 158(a)(5)), which provides that it shall be an unfair labor practice for an employer "to refuse to bargain collectively with the representatives of his employees," is not identical to Gov. Code, § 3505, which requires an employer to "consider fully such representations as are made by the employee organization on behalf of its members prior to arriving at a determination of policy or course of action," the state and federal statutes serve the same purpose: to require an employer to negotiate with employees before implementing decisions that are properly the subject of bargaining. Accordingly, federal cases interpreting the federal statute are properly applied in construing § 3505.

(7) Mandamus and Prohibition § 23--Mandamus--To Public Officers and Boards--Claims Against Cities, Counties and States--Payment of Employment Benefits.

The trial court properly issued a writ of mandate ordering a city to pay all necessary employee health insurance premiums during the pendency of labor negotiations, despite the city's claim it had no ministerial duty to provide the insurance benefits because the memoranda of understanding covering the employees and requiring the city to pay the premiums had expired. The city's obligation was not premised on the expired agreements per se, but rather on its duty to maintain the status quo during negotiations under the meet and confer requirement (Gov. Code, § 3505) Meyers-Milias-Brown Act (Gov. Code, § 3500 et seq.). A writ of mandate will lie to compel a city to pay benefits not encompassed by an agreement when the benefits are mandated by provisions of the act.

(8a, 8b) Mandamus and Prohibition § 13--Mandamus--Conditions Affecting Issuance--Existence and Adequacy of Other Remedy.

The trial court properly issued a writ of mandate ordering a city to pay all necessary employee health insurance premiums during the pendency of labor negotiations, even if the employees had a remedy at law in the form of an action for damages for the increased costs of insurance *816 unlawfully charged by the city. The trial court could reasonably conclude the city's

unlawful extraction of insurance premiums from employees would have an effect on the bargaining process that would transcend the employees' out-of-pocket losses. But for intervention of the writ, the employees' representative would have had to bargain for elimination of the premiums unlawfully withheld from the employees' paychecks. The trial court did not abuse its discretion by implicitly concluding the effect of the city's unlawful action on the bargaining process could not be calculated with reasonable economic certainty, so that a damages remedy was inadequate.

(9) Mandamus and Prohibition § 13--Mandamus--Conditions Affecting Issuance--Existence and Adequacy of Other Remedy.

Under Code Civ. Proc., § 1086, which provides that a writ of mandate must be issued in all cases where there is no plain, speedy, and adequate remedy at law, whether a plain, speedy, and adequate remedy exists at law is a question primarily within the trial court's discretion.

(10) Labor § 44--Collective Bargaining--Actions in State Courts--Mandamus-- Interference With Labor Negotiations.

The trial court, by issuing a writ of mandate ordering a city to pay all necessary employee health insurance premiums during the pendency of labor negotiations, did not improperly interfere with labor negotiations by "short-circuiting" the bargaining process, where the city, prior to any impasse in the negotiations, notified the employees it would withhold an additional \$19 from each employee's paycheck to cover the increased cost of health insurance. It did not give the employees a benefit without giving a corresponding benefit to their employer; rather, the city should not be able to undertake an unlawful act to gain bargaining leverage in negotiations. The courts have not hesitated to issue writs of mandate to correct plainly unlawful practices undertaken by public employees during negotiations subject to the Meyers-Milias-Brown Act (Gov. Code, § 3500 et seq.).

COUNSEL

Gerald A. Sperry, City Attorney, and Edward F. Buckner, Assistant City Attorney, for Defendant and Appellant.

Robert K. Kobler and Irving M. Corren for Plaintiff and Respondent.

SIMS, J.

Defendant City of Stockton (City) appeals from a judgment granting a peremptory writ of mandate ordering it to pay all necessary employee *817 health insurance premiums during the pendency of labor negotiations. City claims it was not required to pay a \$19 per employee premium increase and was justified in unilaterally deducting that amount from employee paychecks because in so doing it was merely maintaining the "status quo" as required by the Meyers-Milias-Brown Act (MMBA). ([Gov. Code, § 3500](#) et seq.) [FN1] Concluding City's actions altered the status quo in violation of the MMBA, we affirm.

FN1 All statutory references are to the Government Code unless otherwise indicated.

Factual and Procedural Background

In November 1981, City and plaintiff San Joaquin County Employees Association, Inc., executed memoranda of understanding (MOU's) covering two bargaining units represented by plaintiff. The MOU's provided, in identical language, that "For the term of this Memorandum

of Understanding, the City shall pay premiums that are necessary and sufficient to provide substantially equivalent benefits for hospitalization, medical, dental/orthodontic and vision benefits that were in effect January 1, 1981."

On April 29, 1983, plaintiff timely notified City that it intended to amend and modify the MOU's. Negotiations began. In the trial court both parties contended, and the trial court found, that the MOU's expired as of June 30, 1983.

Sometime after June 30, 1983, the cost of insurance rose by \$19 per employee per month. On or about July 15, 1983, while negotiations on new MOU's were still in progress and prior to any impasse in negotiations, City notified its employees that it would withhold the \$19 from each employee's paycheck beginning August 7, 1983.

On September 13, 1983, plaintiff obtained a peremptory writ of mandate commanding City, pending completion of the negotiating process, "to pay all premiums necessary to provide substantially equivalent benefits for hospitalization, medical, dental/orthodontic and vision benefits that were in effect January 1, 1981, for the employees of [the two bargaining units] retroactive to August 1, 1983." City appeals.

Discussion

I

(1)The MMBA ([§ 3500](#) et seq.) codifies California's recognition of the right of certain public employees to bargain collectively with their government *818 employers. ([Vernon Fire Fighters v. City of Vernon \(1980\) 107 Cal.App.3d 802, 811 \[165 Cal.Rptr. 908\]](#); see People ex rel. [Seal Beach Police Officers Assn. v. City of Seal Beach \(1984\) 36 Cal.3d 591, 597 \[205 Cal.Rptr. 794, 685 P.2d 1145\]](#).)

[Section 3505](#) provides in pertinent part that "The governing body of a public agency, or such boards, commissions, administrative officers or other representatives as may be properly designated by law or by such governing body, shall meet and confer in good faith regarding wages, hours, and other terms and conditions of employment with representatives of such recognized employee organizations, as defined in subdivision (b) of Section 3501, and shall consider fully such presentations as are made by the employee organization on behalf of its members prior to arriving at a determination of policy or course of action." (Italics added.)

(2)[Section 3505](#) requires City to meet and confer in good faith with employee representatives prior to making any unilateral change in the level of wages or benefits. ([Vernon Fire Fighters v. City of Vernon](#), supra., [107 Cal.App.3d at p. 823](#); see Grodin, Public Employee Bargaining in California: The Meyers-Milias-Brown Act in the Courts (1972) 23 Hastings L.J. 719, 753-756.)

(3a)City does not dispute its duty to maintain the status quo during negotiations respecting the insurance benefits in question but contends it did so by spending the same amount of money to provide the benefits after expiration of the MOU's. We conclude federal cases interpreting the National Labor Relations Act (NLRA) ([29 U.S.C. § 141](#) et seq.) demonstrate City's argument is not well taken.

(4)Cases interpreting the NLRA may properly be referred to for such enlightenment as they may render in our interpretation of the MMBA. ([Fire Fighters Union v. City of Vallejo \(1974\) 12 Cal.3d 608, 617 \[116 Cal.Rptr. 507, 526 P.2d 971\]](#); [Vernon Fire Fighters v. City of Vernon](#), supra., [107 Cal.App.3d at p. 815](#); see [International Brotherhood of Electrical Workers v. City of Gridley \(1983\) 34 Cal.3d 191, 202-203 \[193 Cal.Rptr. 518, 666 P.2d 960\]](#); [Long Beach Police Officer Assn. v. City of Long Beach \(1984\) 156 Cal.App.3d 996, 1007 \[203 Cal.Rptr. 494\]](#); [Independent Union of Pub. Service Employees v. County of Sacramento \(1983\) 147](#)

[Cal.App.3d 482, 488 \[195 Cal.Rptr. 206\]](#).) (5) Under section 8(a)(5) of the NLRA ([29 U.S.C. § 158\(a\)\(5\)](#)), after the expiration of a collective bargaining agreement, the duty to bargain collectively requires the employer to maintain the status quo without taking unilateral action as to wages, working conditions, or benefits until negotiations reach an impasse. (*Producers Dairy Delivery *819 v. Western Conference* (9th Cir. 1981) [654 F.2d 625, 627](#); *Peerless Roofing Co., Ltd. v. N.L.R.B.* (9th Cir. 1981) [641 F.2d 734, 736](#); *Clear Pine Mouldings, Inc. v. N.L.R.B.* (9th Cir. 1980) [632 F.2d 721, 729](#); *N.L.R.B. v. Sky Wolf Sales* (9th Cir. 1972) [470 F.2d 827, 830](#).) The status quo is measured by reference to the expired agreement itself. (See *Clear Pine Mouldings, Inc.*, supra., at pp. 729-730.) As the court said in *Peerless Roofing Co., Ltd. v. N.L.R.B.*, supra., "the collective bargaining agreement itself survives its expiration date for some purposes." ([641 F.2d at p. 736](#).) Thus, during negotiations prior to impasse an employer may not unilaterally change insurance benefits specified in an expired agreement. (*Clear Pine Mouldings, Inc. v. N.L.R.B.*, supra., at p. 729.)

(6) The statute discussed in these cases, section 8(a)(5) of the NLRA, provides in pertinent part that it shall be an unfair labor practice for an employer "to refuse to bargain collectively with the representatives of his employees" Section 8(a)(5) is obviously not identical to [section 3505](#), which expressly requires an employer to "consider fully such presentations as are made by the employee organization on behalf of its members prior to arriving at a determination of policy or course of action." Despite their lack of identity, the state and federal statutes serve the same purpose: to require an employer to negotiate with employees before implementing decisions that are properly the subject of bargaining. Because section 8(a)(5) of the NLRA serves the same purpose as [section 3505](#) of the MMBA, we believe the federal cases cited above are properly applied to our construction of [section 3505](#). (See *International Brotherhood of Electrical Workers v. City of Gridley*, supra., [34 Cal.3d at pp. 202-203](#).)

(3b) In the instant case the expired MOU's required City to provide a certain level of insurance benefits, not to make a specific amount of premium contributions. When City unilaterally began to extract monetary contributions from employees to pay for the benefits it was obligated to supply under the expired MOU's, it disturbed the status quo. (*Clear Pine Mouldings, Inc. v. N.L.R.B.*, aa, [632 F.2d at p. 729](#).) City's unilateral extraction of the contributions violated [section 3505](#)'s commands that City meet and confer in good faith and that it fully consider a presentation by plaintiff prior to arriving at a course of action.

II

(7) City also contends the trial court improperly issued a writ of mandate.

City first contends it had no ministerial duty to provide the insurance benefits because the MOU's had expired. However, City mistakes the origin *820 of its duty. Its obligation is not premised on the expired agreements per se but rather on its duty to maintain the status quo during negotiations under [section 3505](#). It is settled that a writ of mandate will lie to compel a city to pay benefits not encompassed by an agreement when the benefits are mandated by provisions of the MMBA. (See [San Leandro Police Officers Assn. v. City of San Leandro \(1976\) 55 Cal.App.3d 553, 556-558 \[127 Cal.Rptr. 856\]](#); see also [Coan v. State of California \(1974\) 11 Cal.3d 286, 291 \[113 Cal.Rptr. 187, 520 P.2d 1003\]](#); [Tevis v. City and County of San Francisco \(1954\) 43 Cal.2d 190, 198 \[272 P.2d 757\]](#).)

(8a) City also argues the writ was unlawfully granted because the employees had an adequate remedy at law in the form of an action for damages for the increased costs of insurance unlawfully charged by City. For present purposes, we assume arguendo the employees had a remedy in damages for amounts unlawfully withheld from their paychecks.

[Code of Civil Procedure section 1086](#) provides in pertinent part, "The writ [of mandate] must be issued in all cases where there is not a plain, speedy, and adequate remedy in the ordinary course of law." (9) Whether a plain, speedy and adequate remedy exists at law is a question primarily within the trial court's discretion. (*Wyman v. Municipal Court* (1951) [102 Cal.App.2d 738, 741](#) [[228 P.2d 89](#)]; [5 Witkin, Cal. Procedure \(2d ed. 1971\) Extraordinary Writs, §§ 42, 92](#), pp. 3817, 3867.) (8b) In this case the trial court could reasonably conclude City's unlawful extraction of insurance premiums from employees would have an effect on the bargaining process that would transcend the employees' out-of-pocket losses. But for intervention of the writ, plaintiff would have had to bargain for elimination of the premiums unlawfully withheld from employees' paychecks. The trial court did not abuse its discretion by implicitly concluding the effect of City's unlawful action on the bargaining process could not be calculated with reasonable economic certainty, so that a damages remedy was inadequate. (10) Finally, City contends the trial court improperly interfered with labor negotiations by "short-circuiting" the bargaining process. City asserts the trial court gave the employees a benefit without giving a corresponding benefit to their employer. We believe City has things backwards. City should not be able to undertake an unlawful act to gain bargaining leverage in negotiations. The courts have not hesitated to issue writs of mandate to correct plainly unlawful practices undertaken by public employers during negotiations subject to the MMBA. (See, e.g., *International Brotherhood of Electrical Workers v. City of Gridley*, supra., [34 Cal.3d at p. 196](#); [Chula Vista Police Officers' Assn. v. Cole](#) (1980) [107 Cal.App.3d 242, 250](#) [[165 Cal.Rptr. 598](#)].) The trial court properly issued the writ. *821

Disposition

The judgment is affirmed.

Regan, Acting P. J., and Blease, J., concurred.

Cal.App.3.Dist., 1984.

San Joaquin County Employees Ass'n, Inc. v. City of Stockton

END OF DOCUMENT